

REMARKS

Claims 1-7 and 9-11 are currently pending in the present application.

At the outset, Applicants would like to point out two inaccuracies contained in the Office Action Summary, correction of which is respectfully requested.

Specifically, first, at Item (4a), the Examiner has indicated that claim 9 is withdrawn from consideration. Applicants respectfully note that according to ¶ 1, at page 2 of the Office Action, all claims have been rejoined and examined together. Accordingly, claim 9 is no longer withdrawn and in the next communication Applicants request that this be corrected in the Office Action Summary to avoid any confusion.

Second, at Item (12) of the Office Action Summary, the Examiner indicates that the certified copy of the priority document has NOT been received in this application. Applicants respectfully submit that a certified copy of the priority document was submitted by Applicants on July 15, 2004, and received by the USPTO on July 19, 2004, as indicated by the OIPE date-received stamp on the attached copy of the claim for priority, as submitted by Applicants. Accordingly, Applicants respectfully request that the Examiner correct this under Item (12) or otherwise acknowledge receipt in the next Official Communication.

In the Office Action, the Examiner rejects claim 9 under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner contends that claim 9 is in “improper independent/dependent form.” (*See*, the Office Action, p. 2). The Examiner contends that it is not clear whether claim 9 is an independent or dependent claim. Applicants respectfully traverse the Examiner’s rejection and the contentions set forth in support thereof for at least the following reasons.

To begin with, claim 9 clearly depends from claim 1 as it includes the language “according to claim 1.” Thus, Applicants submit claim 9 is a dependent claim, depending from claim 1 as indicated. The Examiner then contends that if claim 9 is dependent, that the phrase “sausage product” lacks antecedent basis. Applicants respectfully submit that claim 9 is clearly

drawn to a sausage product which comprises the sausage casing according to claim 1 and stuffing. It is respectfully submitted that as the claim is directed to a sausage product which comprises the casing according to claim 1 and stuffing, there is no lack of antecedent basis. In other words, "sausage product" as recited in claim 9, is the *indefinite* article of the preamble and does not refer back to a previously recited sausage product. Applicants submit that claim 9 is not indefinite. Reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph is respectfully requested.

In the Office Action, the Examiner rejects claims 1-5, 7 and 9-11 under 35 U.S.C. §103(a), as being unpatentable over German patent reference number DE 2512720 ("DE '720"), based on the English abstract of DE '720 provided by the Examiner with the Office Action, in view of U.S. Patent Application Publication No. 2004/0065072 of Zhu, *et al.* ("Zhu"). Specifically, the Examiner contends that DE '720 discloses a sausage casing which is closed at one end or both ends by a multifilament yarn which is composed of flax fibers and polyolefin fibers. The Examiner acknowledges that DE '720 fails to teach or suggest that the yarn contain a metal insert. However, in this regard, the Examiner argues that Zhu remedies this admitted deficiency of DE '720. Particularly, the Examiner contends that Zhu discloses a yarn which contains metal filaments for the purpose of providing improved cut resistance. The Examiner argues that it would have been obvious to one of ordinary skill in the art to have provided multifilament yarns as disclosed in DE '720 which further include metal filaments as suggested by Zhu "to provide improved cut resistance." (*See*, the Office Action, page 3).

Additionally, the Examiner rejects claim 6 under 35 U.S.C. §103(a), as being unpatentable over DE '720, in view of Zhu, and further in view of U.S. Patent No. 5,236,726 of Lancaster.

Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. §103(a) and the contentions and arguments set forth in support thereof for at least the following reasons.

An embodiment of Applicants' claimed invention is directed to tubular artificial sausage casings which comprise a sausage casing closed at one or two ends by a yarn having a metal insert.

In order to establish a *prima facie* case of obviousness, the references MUST teach or suggest each and every element of the claimed invention; there MUST be some reason provided by the Examiner, either based on the references or found in the knowledge generally available to one of ordinary skill in the art, to combine and modify the references' teachings in order to arrive at the claimed invention; and there must be a reasonable expectation of success in doing so. (See, M.P.E.P. §2142, 8th Ed., Rev. 6 (September 2007); KSR Int'l. Co. v. Teleflex Inc., No. 04-1350 (U.S. Sup. Ct., April 30, 2007)).

Applicants submit that the cited combination of references fails to teach or suggest each and every element of Applicants' claimed invention. Moreover, Applicants submit that one of ordinary skill in the art would have no motivation to combine and modify the references as suggested by the Examiner in order to arrive at the claimed invention. Finally, one of ordinary skill in the art would have no reasonable expectation of achieving the claimed invention based on the cited references.

Specifically, the Examiner has acknowledged that DE '720 fails to teach or suggest a yarn which contains a metal insert for closing a sausage casing at one or both ends. Additionally, Applicants submit that Zhu also fails to teach or suggest a yarn having a metal insert. In this regard, Applicants note that Zhu is directed to a ply-twisted yarn which comprises a first multifilament yarn comprising continuous organic filaments, AND a second yarn comprising one to five continuous inorganic filaments which may be comprised of metal. Thus, Zhu is directed to a combination of two separate yarns which are twisted together in a direction opposite to that of the twist in the first yarn. (See, Zhu, paragraph [0009]).

Thus, contrary to the Examiner's contention, Zhu does not remedy the admitted deficiency of DE '720. Rather, Zhu merely discloses a ply-twisted yarn comprised of two separate multifilament yarns, where one yarn itself can be made of metal filaments. Neither

reference, nor a combination thereof, teaches *a yarn having a metal insert which can be used to close a sausage casing at one end or two ends.*

Furthermore, Applicants respectfully submit that one of ordinary skill in the art would not be motivated to apply teachings of Zhu to the sausage casing disclosure of DE '720. Thus, even if one were to assume, for argument's sake, that the cited combination of references did in fact teach each and every element of the claimed invention, which it does not, there would be no reason to apply the cut-resistant, ply-twisted yarn and fabrics of Zhu to the sausage casing of DE '720. In this regard, Applicants note that Zhu is directed to specialty yarns and fabrics which "are useful in protective garments, especially garments known as turnout gear which are useful for fire fighters [... and] in industrial applications where workers may be exposed to abrasive and mechanically harsh environments where fire and flame protection is needed." (*See*, Zhu, ¶ [0001]).

The instant application is not directed to providing cut-resistant yarns as disclosed in Zhu. Rather, the present invention is directed to providing closures for sausage casings which withstand the high-pulsating stuffing pressure which occurs during stuffing and further processing of the sausage, such that the closure remains at the same point throughout processing and avoids any slipping off from the casing. (*See*, Applicants' Specification, page 4, lines 14-18). In contrast, Zhu, which is related to protective garments made from fabrics which comprise the disclosed ply-twisted yarn made of two separate yarns, discloses a specialty yarn which preferably includes a first yarn that is comprised of an aramid (*e.g.*, KEVLAR®, *see*, Zhu, Examples) filament and a second yarn which is comprised of a steel filament. Such materials are expensive and not commonly used in applications such as the stuffing and processing of sausage. Accordingly, Applicants submit that one of ordinary skill in the art would not be motivated to apply the teachings of Zhu to those of DE '720. Moreover, the yarns of DE '720 are not used to make fabrics, and one of ordinary skill in the art of sausage processing would not look to fabric making disclosures, much less specialty fire-protective fabric disclosures for the development of sausage casing closures.

Finally, even if one of ordinary skill in the art were motivated to combine the teachings of the cited references, which Applicants submit they would not be, and if it were assumed that the cited combination of references did in fact teach each and every element of the claimed invention, which it does not, one of ordinary skill in the art would have no reasonable expectation of successfully providing a sausage casing closure *which is less susceptible to slippage during the processing of the sausage* as disclosed in Applicants' Specification, particularly with reference to the examples. (See, e.g., Applicants' Specification, p. 1, lines 4-9; p. 4, lines 14-25; p. 5, lines 4-7; the Examples and Testing at pp. 9-10).

Accordingly, Applicants submit that the cited combination of references fails to satisfy the criteria necessary to establish a *prima facie* case of obviousness. Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) are respectfully requested.

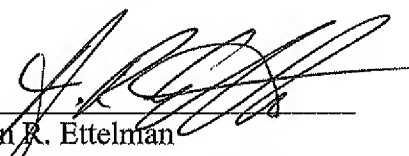
Conclusion:

In conclusion, Applicants respectfully submit that the pending claims comply with 35 U.S.C. §112, second paragraph, and patentably distinguish over the cited prior art. Accordingly, withdrawal of the rejections set forth in the Office Action and a Notice of Allowance are respectfully requested.

Respectfully submitted,

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PATENT APPLICATION
CH-8053
WW-5621

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION OF)
ANTON KRALLMANN ET AL)
SERIAL NUMBER: 10/771,676)
FILED: FEBRUARY 3, 2004)
TITLE: TUBULAR SAUSAGE CASING WITH A YARN)
TIE HAVING A METAL INSERT AND A)
PROCESS FOR PRODUCTION THEREOF)

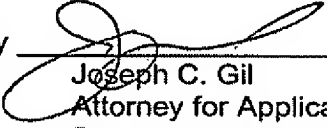
CLAIM FOR PRIORITY UNDER 35 USC 119

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby claim foreign priority benefits under Title 35, United States Code, 119, as stated on their previously submitted Declaration and Power of Attorney document. Applicants further submit the enclosed certified copy of German application 103 05 580.0, claiming foreign priority on the above-identified U.S. application.

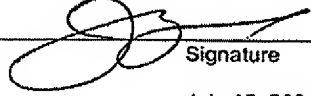
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an enveloped addressed to: Commissioner for Patents, Alexandria, VA 22313-1450 07/15/04
Date

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Name of applicant, assignee or Registered Representative


Signature
July 15, 2004
Date